

1 Thomas J. Salerno (AZ Bar No. 007492)
2 Jordan A. Kroop (AZ Bar No. 018825)
3 James D. Smith (AZ Bar No. 016760)
4 **SQUIRE, SANDERS & DEMPSEY L.L.P.**
5 Two Renaissance Square
6 40 North Central Avenue, Suite 2700
7 Phoenix, Arizona 85004-4498
8 (602) 528-4000
9 Attorneys for LaSalle National Bank,
10 in its capacity as Trustee

11
12 **IN THE UNITED STATES BANKRUPTCY COURT**
13 **FOR THE DISTRICT OF ARIZONA**
14

15 In re:) In Proceedings Under Chapter 11
16)
17 LEEWARD HOTELS, L.P., an Arizona Limited) Case No. B-99-09162 PHX-GBN
18 Partnership,)
19) **SECURED LENDERS' MOTION FOR RULE**
20) **2004 PRODUCTION OF DOCUMENTS**
21 Debtor.)
22)
23)
24)
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28)

29 Pursuant to Bankruptcy Rule 2004, LaSalle National Bank, in its capacity as Trustee for
30 the registered holders of the DLJ Mortgage Acceptance Corporation, Commercial Mortgage
31 Passthrough Certificates, Series 1997-CF1 (hereinafter, "the Secured Lender"), requests that the
32 Court enter its Order requiring the production of documents by Ramada Franchise Systems, Inc./
33 Days Inn of America, Inc., Best Western International, Inc., and Holiday Hospitality
34 Franchising, Inc. (collectively, "the Franchisors"). In support of this Motion, the Secured Lender
35 states:

36 1. Under Bankruptcy Rule 2004, upon motion of any party in interest, the Court may
37 order any person to produce documents relating to the acts, conduct, property, liabilities, and
38 financial condition of Debtor, as well as any other matter that may affect the administration of
39 Debtor's Estate.

2. The Secured Lender requests documents from the Franchisors for the purposes allowed under Rule 2004. Upon information and belief, the Franchisors have in their possession, custody, or control documents essential to a complete examination of Debtor's business affairs and financial condition, including documents relating to agreements for the operation of Debtor's hotels and analyses of those hotels. The Secured Lender requests that Franchisors produce the documents identified and requested in Exhibit A to the proposed Order submitted herewith.

WHEREFORE, the Secured Lender requests that the Court enter its Order requiring the Franchisors to produce all items identified in Exhibit A to the proposed form of Order at the offices of Squire, Sanders & Dempsey L.L.P., 40 North Central Avenue, Suite 2700, Phoenix, Arizona 85004, on or before 10:00 a.m. (MST), May 23, 2000.

A proposed form of Order is attached.

RESPECTFULLY SUBMITTED this 1st day of May, 2000.

SQUIRE, SANDERS & DEMPSEY L.L.P.
Two Renaissance Square
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004-4498

By /s/ James D. Smith
 Thomas J. Salerno
 Jordan A. Kroop
 James D. Smith
 Attorneys for LaSalle National Bank in its capacity
 as Trustee

ORIGINAL of the foregoing filed this
1st day of May, 2000, with:

Clerk of the Bankruptcy Court
2929 N. Central Avenue, 9th Floor
Phoenix, Arizona 85067-4151

COPY of the foregoing served via first
class mail this 1st day of May, 2000, to:

Carolyn J. Johnsen
HEBERT SCHENK & JOHNSEN PC
1440 East Missouri, Suite 125
Phoenix, Arizona 85014-2459
Attorneys for Debtor

OFFICE OF THE U.S. TRUSTEE
2929 North Central Avenue, Suite 700
Phoenix, Arizona 85012

Daren W. Perkins
SNELL & WILMER
One Arizona Center
400 E. Van Buren
Phoenix, Arizona 85004

Laurel M. Isicoff
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200 South Biscayne Boulevard
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JENNINGS STROUSS & SALMON
One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2393

1 Tim Small, Sr.
2 BEN E. KEITH COMPANY
3 601 East 7th Street
4 P.O. Box 2628
Ft. Worth, Texas 76113-2628

5 Timothy Greiner
6 GREINER & LANGER
7 2001 Route 46, Suite 207
Parsippany, New Jersey 07054

8 Missouri Department of Revenue
9 Bankruptcy Unit
10 ATTN: Gary Barnhart
11 P.O. Box 475
Jefferson City, Missouri 65105-0475

12 Charles Brackett
13 KELBERG LAW FIRM
14 First City Tower
1001 Fannin, Suite 1100
Houston, Texas 77002-6708

15 Steven Berger
16 ENGLEMAN BERGER
17 One Columbus Plaza, Suite 100
18 3636 North Central Avenue
Phoenix, Arizona 85012-1985

19 James Burshtyn
20 LINEBARGER HEARD et al
21 1949 South IH 35 (78741)
22 P.O. Box 17428
Austin, Texas 78760-7777

23 Elizabeth Weller
24 LINEBARGER HEARD et al
25 2323 Bryan Street, Suite 1720
Dallas, Texas 75201-2691

26 Dennis Miller
27 EVERS & HENDRICKSON
155 Montgomery Street, 12th Floor
San Francisco, California 94104

Michael Reed
MCREARY, VESELKA, BRAGG & ALLEN
P.O. Box 26990
Austin, Texas 78755-0990

/s/ Silvia Miranda

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5 **IN THE UNITED STATES BANKRUPTCY COURT**
6 **FOR THE DISTRICT OF ARIZONA**
7

8 In re:) In Proceedings Under Chapter 11
9)
10 LEEWARD HOTELS, L.P., an Arizona Limited) Case No. B-99-09162 PHX-GBN
11 Partnership,)
12) **ORDER DIRECTING RULE 2004**
13) **PRODUCTION OF DOCUMENTS**
14 Debtor.)
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29 The Court received and considered Secured Lender's Motion for Rule 2004
30 Examination and Production of Documents. Good cause appearing,

31 IT IS THEREFORE ORDERED that Ramada Franchise Systems, Inc./Days Inn
32 of America, Inc., Best Western International, Inc., and Holiday Hospitality Franchising, Inc.
33 (collectively, "the Franchisors") produce all items identified in Exhibit A hereto at the offices of
34 Squire, Sanders & Dempsey L.L.P., 40 North Central Avenue, Suite 2700, Phoenix, Arizona
35 85004, on or before 10:00 a.m. (MST), May 23, 2000.

36 IT IS FURTHER ORDERED that Secured Lender serve this Order upon counsel
37 for the Franchisors and file a certificate of service.

38 DATED: May ___, 2000.

39 _____
40 George B. Nielsen, Jr.
41 United States Bankruptcy Judge
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1 EXHIBIT A

2 **DEFINITIONS**

3 A. As used herein, the term “Leeward” means any or all of Leeward Hotels,
4 L.P., in all of its capacities, including but not limited to its legal capacity as a Debtor and Debtor-
5 in-Possession in the above-captioned matter; its present and former subsidiaries; its present and
6 former parent companies; its affiliates and divisions; its predecessors-in-interest; its successors-
7 in-interest; its present and former general partners, limited partners, agents, or attorneys; any
8 person controlling, controlled by, or under common control with it; any person acting on behalf
9 of it or its parents, subsidiaries, affiliates, and divisions of their predecessors-in-interest; and any
10 of the aforementioned holding or having held any degree of ownership interest in Leeward
11 through the date of your responses to these requests.

12 B. As used herein, the term “Kilburg Hotels” refers to Kilburg Hotels,
13 L.L.C., in all of its capacities, including but not limited to its present and former subsidiaries; its
14 present and former parent companies; its affiliates and divisions; its predecessors-in-interest; its
15 successors-in-interest; its present and former officers, directors, employees, agents, or attorneys;
16 any person controlling, controlled by, or under common control with it; any person acting on
17 behalf of it or any of its parents, subsidiaries, affiliates, and divisions of their predecessors-in-
18 interest; and any of the aforementioned holding or having held any degree of ownership interest
19 in Kilburg Hotels through the date of your responses to these requests.

20 C. As used herein, the term “Hotel Capital Ventures” refers to Hotel Capital
21 Ventures L.L.C., a Delaware limited liability company, in all of its capacities, including but not
22 limited to its present and former subsidiaries; its present and former parent companies; its
23 affiliates and divisions; its predecessors-in-interest; its successors-in-interest; its present and
24 former officers, directors, employees, agents, or attorneys; any person controlling, controlled by,
25 or under common control with it; any person acting on behalf of it or any of its parents,
26 subsidiaries, affiliates, and divisions of their predecessors-in-interest; and any of the
27 aforementioned holding or having held any degree of ownership interest in Hotel Capital
28 Ventures L.L.C. through the date of your responses to these requests.

1 D. The term “The Hotels” refers to the following hotels collectively: Abilene
2 Holiday Hotel (Abilene, Texas); Abilene Inn Hotel (Abilene, Texas); Dallas Best Hotel (Dallas,
3 Texas); Las Cruces Inn Hotel (Las Cruces, New Mexico); Leavenworth Hotel (Leavenworth,
4 Kansas); Liberty Best Hotel (Liberty, Missouri); Olathe Best Hotel (Olathe, Texas); Ottawa
5 Hotel (Ottawa, Kansas); Plainview Holiday Hotel (Plainview, Texas); Round Rock Hotel (Round
6 Rock, Texas) and Lubbock Hotel (Lubbock, Texas).

7 E. As used herein, the term “Lubbock Hotel” refers to the Best Western
8 Hotel in Lubbock, Texas, located at 6624, I-27, Lubbock, Texas.

9 F. The terms “You” and “Your” refer to the person or entity to which this
10 document request is directed, your present and former agents, attorneys, or any other persons
11 acting on your behalf.

12 G. As used herein, the terms “Document” and “Documents” shall have the
13 meanings ascribed to them under Bankruptcy Rule 7034 and include, without limitation, the
14 original (or copy if original is unavailable) of any printed, type-written, handwritten, tangible,
15 photocopied, or otherwise reproduced item relating to information requested herein that is in the
16 possession, custody, or control of the party to be examined or that is available through the
17 exercise of reasonable diligence, including but not limited to: communications; letters;
18 memoranda; messages; handwritten notes; computer diskettes; CDs; telegrams; agreements;
19 deeds; contracts; stock certificates; promissory notes; appraisals and evaluation estimates of any
20 kind; financial data; books of account; accounting ledgers and journals; credit and loan
21 applications; tax returns and records; financial statements; audit reports; pro forma; cash flow
22 records; financial projections; operating statements; balance sheets; accounts payable and
23 receivable; bank records; checks; cancelled checks; invoices; sales receipts; charge receipts;
24 expense records; personal receipts; insurance records; diaries; calendars; logs; pre-petition court
25 filings; transcripts of interviews or testimony given before any person, officer, or tribunal
26 (whether sworn or unsworn) and any written summaries, reports, or statements thereof; notes of
27 conversations, meetings, investigations, opinions, interviews, or testimony; books; pamphlets;
28 brochures; newspapers; magazines; periodicals; catalogs; price lists; prospectuses; charts;

1 graphs; maps; drawings or other representations or depictions covering Debtor's affairs;
2 telephone records; audio or video tape recordings; telefax copies; computer printouts, datacard
3 programs, or other input or output of data processing systems; photographs (positive print or
4 negative), microfilm, or microfiche; and other data compilations and every other device or
5 medium on which or through which information of any type is transmitted, recorded, or
6 preserved. The terms "document" and "documents" shall also include each copy that is not
7 identical to the original or to any other produced copy of, as well as any preliminary drafts of any
8 document or working paper related thereto.

9 H. The terms "person" or "persons" shall include any natural person,
10 corporation, partnership, proprietorship, association, joint venture, governmental or other public
11 entity, or any other form of organization or legal entity, and all of their officials, directors,
12 officers, employees, representatives, and agents.

13 I. The term "communication" means oral, graphic, demonstrative,
14 telephonic, verbal, electronic, written, or like conveyance of information, including documents.

15 J. The term "relating to" means concerning, referring to, consisting of,
16 containing, describing, evidencing, or constituting.

17 K. The term "referring to" means evidencing, embodying, pertaining to,
18 concerning, constituting, comprising, or having any logical or factual connection with the subject
19 matter of the specification.

20 L. The terms "and" and "or" shall be construed as is necessary to make each
21 request inclusive rather than exclusive.

22 M. Wherever appropriate, the singular form of a word should be interpreted in
23 the plural.

24 **INSTRUCTIONS**

25 A. You are requested to segregate the documents produced pursuant to this
26 request according to the paragraph and subparagraphs hereof in response to and under which
27 they are produced.

1 B. Unless otherwise specified, this request seeks documents dated, prepared,
2 or pertaining to the time period referred to in the pleadings filed in this matter.

3 C. The person upon whom this request is served shall respond by stating with
4 respect to each item or category set forth herein that inspection will be permitted as requested
5 unless objected to, in which event the reasons for objection shall be stated. If an objection is
6 made to part of any item or category, that part should be specified.

7 D. If you consider any responsive document to be privileged, with respect to
8 each such document, provide the following information:

9 (1) a general description of the document;

10 (2) a full explanation of the factual and legal bases of the privilege
11 claimed;

12 (3) the identity of the author(s) and all recipients of the document;

13 (4) the identity of the present custodian of the document;

14 (5) the identity of each person who was present when the document
15 was prepared and who has seen the document; and

16 (6) an identification of every other document that refers to or
17 otherwise describes the contents of the document claimed to be privileged.

18 E. Each document produced pursuant to this Exhibit A shall be produced as it
19 is kept in the usual course of business (i.e., in the file folder or binder in which such documents
20 were located when the request was served) or shall be organized and labeled to correspond to the
21 categories of documents requested.

22 F. You are instructed to produce any and all documents that are in your
23 possession, custody, or control. Possession, custody, or control includes constructive possession
24 whereby you have a right to compel the production of a matter from a third party (including an
25 agency, authority, or representative).

26 G. To the extent the location of any document called for by this Exhibit A is
27 unknown to you, so state. If any estimate can reasonably be made as to the location of an
28 unknown document, describe the document with sufficient particularity so that it can be

1 identified, set forth your best estimate of the document's location, and describe the basis upon
2 which the estimate is made.

3 H. If any document requested is deemed to call for the disclosure of
4 proprietary, confidential, or trade secret information, counsel for the Secured Lender is prepared
5 to receive such data pursuant to an appropriate confidentiality agreement and order.

6 I. If any document has been lost or destroyed, the document shall be
7 identified by author, date, subject matter, date of loss or destruction, identity of person
8 responsible for loss or destruction, and if destroyed, the reason for such destruction.

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10 **DOCUMENTS TO BE PRODUCED**

11 1. All franchise agreements for any of the Hotels.

12 2. All documents pertaining to any franchise agreements for any of the
13 Hotels.

14 3. All correspondence with Leeward, Kilburg Hotels, Hotel Capital
15 Ventures, or William Kilburg from January 1, 1998, to the present.

16 4. All property improvement reports created from January 1, 1998, to the
17 present referring to any of the Hotels.

18 5. All reports, inspections, or analyses created from January 1, 1998, to the
19 present referring to the operations, cash flows, physical condition, or finances of any of the
20 Hotels.

21 6. All documents received from Leeward, Kilburg Hotels, Hotel Capital
22 Ventures, or William Kilburg referring to any of the Hotels' actual or projected operations, cash
23 flows, physical condition, or finances.